In the High Court of Judicature for Rajasthan
Jaipur Bench

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Cr. Misc. Petition No.339/2002
M/s Pesticides India Ltd. & Anr. ***Versus*** State & Anr.

Date of Order ::: 20/09/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. V.R.Bajwa, for petitioners
Mr. Arun Sharma, Public Prosecutor for State.

Manufacturers of pesticides have invoked inherent powers U/s 482 CrPC for quashing proceedings in Cr.Case-141/99 pending before Judl. Mag. No.3, Ajmer for offence U/S 29(1)(a) of Insecticides Act, 1968 (“**the Act**”).

Petitioner No.1 (accused No.3) is a public limited company engaged in manufacturing pesticides while No.2 (accused No.4) is its Managing Director.

On 24/07/90, Insecticide Inspector cum Asstt. Director Agriculture, Ajmer inspected M/s Singodia Trader, Kekri (Ajmer) and took sample of “pesticide BHC-10%-Dust bearing Batch No.90DZ having manufacturing date 29/02/90 and expiry date 27/02/92, which was seized and sealed in compliance of provisions of S.22(5) & (6) of the Act. Sample was sent for analysis to State Pesticides Testing Laboratory Durgapura, Jaipur

which vide report dt.17/09/90 showing active ingredient – Gamma isomer -0.59 w/w hence it was opined that sample does not confirm to IS specification No.561-1978 in active ingredient; so was considered to be misbranded in view of S.3 (k) of the Act - a copy whereof alongwith show cause notices dt.24/09/90 was sent by Insecticide Inspector to the Traders & petitioners – in response whereof, they sent their reply on 05/10/90 controverting report of State Pesticides Laboratory and intended to adduce evidence in contra-version of report dt.24/09/90, as provided U/s 24(3) of the Act.

It appears that despite intention shown by petitioners accused within 28 days of show cause notice, no steps were taken by Insecticide Inspector to get referee sample re-tested through Central Insecticide Laboratory. After written consent from competent authority U/s 31(1) of the Act vide letter dt.06/12/90, complaint was filed against petitioners as well as other accused for offence U/s 29(1)(a) of the Act on 23/02/91.

It is relevant to state that though complaint was filed on 23/02/91 & registered on 07/05/91 but the fact relevant for consideration in the facts of instant case is that learned

Magistrate took cognizance on 22/04/93 - after almost two years of filing complaint and issued process against petitioners for 15/07/93 – by that time, shelf life of the sample also expired in 27/02/92, itself. This Court considers to examine order sheets drawn on 03/07/91, 20/07/91, 21/08/91, 19/12/91, 04/02/92, 17/04/92, 12/08/92, 14/12/92, 30/01/93 & 18/02/93, Court directed the APP to place book of Insecticide Act for perusal which was placed on 22/04/93 on which learned Magistrate took cognizance.

Thereafter matter continued awaiting service of summons and process issued against petitioners and co-accused for one reason or the other till they were served and appeared on 08/08/2000. Hence this petition for quashing proceedings initiated against petitioners.

Counsel for petitioners submits that manufacturing Company and its Managing Director are arrayed as accused and can be held guilty under the Act only when complaint discloses as to how and in what manner the petitioner/Managing Director was in-charge of or responsible to the Company for conduct of its business, as provided U/s 33 of the Act whereas in instant case,

complaint does not disclose that at the material time, he was in-charge of and responsible to the Company for conduct of its business and merely because he was Managing Director of the Company which will not necessary hold him liable; and in absence whereof, complaint was not legally sustainable and he cannot be held vicariously liable for commission of offence under the Act; as such once necessary ingredients as provided in S.33 of the Act are missing in complaint in order to launch prosecution against Director of Co., as such, very cognizance taken is not sustainable and such proceedings, if allowed to continue against petitioner, will be nothing but abuse of process of law. In support, Counsel placed reliance upon decision of Apex Court in **Municipal Corporation of Delhi Vs. Ram Kishan (AIR 1983 SC 67)** and of this Court in **Bharat Insecticides Vs. State ((1997(1) WLC 690)**, taken note of **DB** of this Court in **M/s Cadila Health Care Ltd Vs. State (2007(1) RLR 389)**.

Counsel further submits that once the petitioners (accused) controverted report of State Pesticide Laboratory, yet sample was not sent to the Central Laboratory and by the time,

cognizance was taken and summons could be served upon them, shelf life of sample itself has expired, which has resulted in violating their statutory right to get the sample re-tested U/s 24(4) of the Act – in absence whereof, report of State Laboratory cannot be read as conclusive proof against them. In support, Counsel placed reliance upon series of decisions of Apex Court in **Municipal Corporation of Delhi Vs. Ram Kishan, ibid; State of Haryana Vs. Unique Farmaid (1999 (8) SCC 190=SCC(Cr) 1404) and of this Court in United Phosphorus Vs. State (2002(2) CrLR (Raj) 826) & Tikayat Kisan Vikas Vs. State (2005(2) CrLR (Raj.) 1456).**

Per contra, Public Prosecutor supported the order and submits that whatever objections raised herein are available for the petitioners to make at the stage of trial and as such the petition deserves to be dismissed.

I have considered contentions of both the parties and with their assistance, perused material on record. It is admitted case of parties that pesticide sample taken by Insecticide Inspector on being tested by State Pesticide Laboratory was found to be misbranded and this report was controverted and submitted

reply raising objection denying the allegation in the test report within statutory period of 28 days as provided U/s 24(3) of the Act and requesting that referee sample be sent to the Central Laboratory but before it could be re-analysed, shelf life of sample in question has expired and that being so, no opinion could have been expressed by Central Laboratory, as taken note of by this Court in course of narration of facts (supra).

In order to appreciate, it would be convenient to have a look at Section 33 of the Act - provisions whereof clearly spells out that every person who was in charge of or responsible to the Company for conduct of its business, as well as the Company shall be deemed to be guilty of offence alleged to have been committed by Company and that being so, S.33(2) further clarifies that it has to be proved that offence has been committed with a consent or connivance, which can be attributable to any neglect on the part of Director/Manager, Secretary or other person of Company, who can alone be prosecuted and punished.

Relevant para 6 of complaint reads :

"6- यह है कि अभियुक्त गण सं-1 व 2 मेसर्स सिंगोदिया टेडर्स केकडी व श्री बजरंगलाल मालिक विक्रेता ने मिसब्राडेड मीटनाशक औषधि स्टाक एवं बिक्री कर कीटनाशक अधिनियम की धारा 29 (1) (ए) के अनुसार अपराध किया है तथा अभियुक्त गण 3 व 4 मेसर्स पेस्टीशायड इंडिया का मालिक भागीदारान ने मिसब्राण्डेड मीटनाशक औषधि का निर्माण एवं विक्रय कर कीटनाशाक अधिनियम की धारा 29 (1)(ए) के अनुसार अपराध किया है इस प्रकार उक्त सभी अभियूक्त गण कीटनाशक अधिनियम के अन्तर्गत दण्ड दिए जाने योग्य है

On a perusal of complaint, itself, there is no iota of allegation that petitioner was in-charge of or responsible to the Company for conduct of its business. It is settled that for criminal liability, penal action must be strictly construed and in criminal law, every role of vicarious liability should be spelled out in complaint, itself against persons sought to be made vicariously liable. There is no vicarious liability unless statute specifically provides for.

S.33 of the Act deals with offences by Companies but does not make all the Directors liable for commission of offence by Company merely because of their holding office of Directors or in other capacity. These questions have been examined by Apex Court in **State of Haryana Vs. Brijlal Mittal (AIR 1998 SC 2327)** and

by Co-ordinate Bench of this Court in **Bharat Insecticides Ltd vs. State (supra)** and in recent DB decision in **Cadila Health Care Ltd Vs. State (supra).**

In State of Haryana Vs. Brijlal Mittal (supra), Apex Court observed ad infra:

> "It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in-charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfills both the above requirements so as to make him liable. Conversely, without being a director a person can be in-charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in-charge of the company and also responsible to the company for the conduct of its business."

In **Cadila Health Care Ltd Vs. State (supra),** after having taken note of all decisions

rendered by Apex Court, Division Bench finally observed while examining scope of S.34 of the Act ad infra: -

> **"21.** The crucial test which has been laid down by the Hon'ble Supreme Court on the issue of Director being 'in charge of' & 'responsible to the company for the conduct of business of the company' as required under section 34 of the Act is that the Director is concerned with the day-to-day working of the company, or in other words, for over-all control of the day-to-day business of the company or firm which excludes Directors connected with policy of the company. The Director may not be in charge of business of the company or may be in charge of business of the company but not over all in charge or may be in charge of only some part of business and further test as regards averments/ allegations made in the complaint, the Supreme Court had laid down that words mentioned in the section are not the magic words but the substance of the allegations be read as a whole. "

In view of what has been observed (supra), very complaint filed against petitioner No.2 in instant petition is not sustainable as it lacks material particulars as provided in S.33 of the

Act.

As regards contentions with regard to expiry of shelf life of sample in question depriving them of their right U/s 24(4) of the Act, suffice is to say that in their reply while controverting report of State Laboratory within 28 days of receipt thereof and intending to adduce evidence in support of their defence, and requesting for getting referee sample re-tested through Central Laboratory as provided U/s 24(4) of the Act, but the Insecticide Inspector did not advert to their request and by the time, sample in question could be sent to the Central Laboratory, shelf life whereof had expired.

In **State of Hariana Vs. Unique Farmaid (supra)** Apex Court observed ad infra :

> **"11.** .. The procedure for testing the sample is prescribed and if it is contravened to the prejudice of the accused, he certainly has the right to seek dismissal of the complaint. There cannot be two opinions about that. Then in order to safeguard the right of the accused to have the sample tested from the Central Insecticides Laboratory, it is incumbent on the prosecution to file the complaint expeditiously so that the right of the accused is not lost. In the

> present case, by the time the respondents were asked to appear before the Court, the expiry date of the insecticide was already cover and sending of the sample to the Central Insecticides Laboratory at that late stage, would be of no consequence. This issue is no longer res integra. In **State of Punjab Vs. National Organic Chemical Industries Ltd (1996(11) SCC 613**), this Court in somewhat similar circumstances said that the procedure laid down under section 24 of the Act deprived the accused to have the sample tested by the Central Insecticides Laboratory and adduce evidence of the report so given in his defence. This Court stressed the need to lodge the complaint with utmost despatch so that the accused may opt to avail the statutory defence. The Court held that the accused had been deprived of a valuable right statutorily available to him."

In the facts of instant case, petitioners herein have been deprived of their valuable right to get sample re-tested from Central Laboratory U/s 24 (4) of the Act. Hence once sample could not have been re-analysed by Central Insecticide Laboratory - in absence whereof, State Laboratory report cannot be considered as conclusive.

As regard petitioner No.1 (manufacturing Company) it can certainly be prosecuted and Section 33 has no application but since shelf life of pesticide has expired and despite State Pesticide Laboratory report being controverted, sample was not sent for re-analysis to the Central Laboratory – in absence whereof, report of State Laboratory cannot be read as conclusive evidence; as such in such circumstances, no purpose will be served even while prosecuting petitioner No.1 (Company), as well.

It is true that this Court would always be reluctant to consider such cases at initial stage of trial and inherent powers U/s 482, CrPC are to be exercised very sparingly in exceptional cases. However, objection raised herein goes to the root of prosecution and manifestly show that if criminal proceedings are allowed to continue then it would amount to abuse of process of law. In the facts of instant case, ibid, allowing the complaint to stand against petitioners is nothing but an abuse of process of law.

Here this Court would like to further observe that even concerned Magistrates takes up such cases very lightly and take cognizance and issue process in mechanical manner without

application of mind on facts disclosed in complaint and so also relevant law which is expected to be taken note of by trial Magistrate before issuing process. Even in instant case, trial Magistrate took cognizance after almost two years of filing of the complaint and by that time, shelf life of sample has expired and the cases are adjourned without any effective proceedings. Such like cases require that service of notices is affected upon the accused as early as possible so as to enable the accused to get sample re-tested by Central Laboratory before expiry of shelf life of the sample.

As regards instant case, I must point out that very shockingly, for about two years as it appears from order sheets drawn by trial Magistrate from 03/07/91 to 18/02/93, the case has been lingering on asking the Asstt. Public Prosecutor to place the Insecticide Act - in the absence whereof, learned Magistrate did not take cognizance till 22/04/93. In this view of things, this Court is of prima facie opinion that it is a case of dereliction of duty discharged by Magistrate, which deserves to be examined and if found to be otherwise proper action be taken as provided under law.

The manner in which matter has been dealt with by learned Magistrate, has benefitted culprits and this indirect method if allowed to continue, very purpose with which legislature has enacted the Act, can easily be frustrated. Hence it has to be taken proper care so as to avoid recurrence of such kind of lapses in future.

Consequently, misc. petition is hereby allowed alongwith stay petition No.224/02. Complaint and further proceedings as against petitioners initiated in Cr.Case-141/99 pending before Judl. Mag. No.3, Ajmer are hereby quashed and set aside. Record be sent back forthwith to the court below.

A copy of this order be sent to the Registrar General for necessary action as observed (supra) in accordance with law.

(**Ajay Rastogi), J.**

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